

Changes to Insurance Managers and Insurance Intermediaries Law and Associated Regulations

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Outline

- Michael Graham – Law changes, Conduct of Business Rules and Annual Return
- David Quick – Clients' Monies Regulations
- Tracy Bideau – Approved Asset Regulations and minimum licensing criteria

Agenda

- Background
- Timetable
- Changes to the Law
- Conduct of business rules
- Annual return regulations

Background

- Industry working parties developed proposals
- 11 April 2007 – Consultation paper issued
- 16 May 2007 – Consultation ended
- 22 June 2007 – Results of consultation advised
- States Report / approval by Policy Council
- Law Officers draft amending ordinance and associated regulations in consultation with Commission
- States legislative process
- Regulations – Consultation with Sark, Alderney and Policy Council

Current Timetable

- Amending ordinance enacted on 12 March 2008
- Regulations issued by Commission on 12 March 2008
- Certain provisions in regulations have extended commencement dates

(A) 12 March 2009

- Change to minimum capital requirements
- Introduction to approved assets counting towards solvency requirements
- Requirement to appoint compliance officer/function
- Requirements for licensees to have a training and compliance scheme
- Training log for AIRs

(B) Minimum level of professional indemnity insurance – Date of Renewal or 12 March 2009 whichever is earlier

Changes to the Law

(1) PI

- Currently obligation to maintain adequate PI Cover changed to obligation to maintain level stipulated by regulation
- Statutory duty to disclose to PI insurers regulatory action taken by Commission against licensee (amplified in Business Rules) and to notify Commission when done
- Statutory duty to notify to Commission compliance with warranties; purported avoidance of PI; rejection of claim notified to PI insurers

Changes to the Law

(2) Reporting Requirements

- Enhanced reporting requirements for trigger events (amplified in Business Rules)
- Enhanced reporting requirements – Annual Return (amplified in Annual Return regulations)

Changes to the Law

(3) Commission Powers

- Power to make prohibition orders – brings into line with other laws concerning regulated entities
- Removal of licence suspension provisions – in future by way of condition
- Publication of imposition of conditions – clarifying Commission has discretion not to publicise details of a condition
- Extension of categories of persons who can be investigated by inspectors appointed by Commission

Changes to the Law

Advertisements

- Withdrawal of the requirement to submit advertisements prior to publication
- Conduct of Business Rules retain general requirements about advertisements

Conduct of Business Rules

(1) Application

- All provisions apply to intermediaries
- Certain specific provisions apply as well to insurance managers

Conduct of Business Rules

(2) Complaints

- Requirement for complaints procedures
- Minimum requirements
 - Current requirements remain
 - Register of written complaints and verbal not resolved within 24 hours

Professional Indemnity

(also applies to insurance managers)

Limits

- Each and every loss cover of at least £250,000
- On an annual basis £1,000,000 or 3 times fees income whichever is greater
- Deductible exceeds £25,000 on basis of each and every loss. MCR increase of 125% of deductible

Disclosure (also applies to insurance managers)

(1) Applying for cover

- Regulatory action – conditions, revocation, regulatory penalty, prohibition order

(2) Warranties

- Compliance warranties applying at commencement of PI and any continuing warranties

(3) Disclosures/notifications

- Compliance with any on-going policy requirements

Disclosure (also applies to insurance managers)

(4) Specific notification requirements during policy period

- Include notify PI insurers within 14 days
 - Imposition / details of conditions
 - Revocation
 - Penalties
 - Prohibition

(5) Notify Commission immediately

- Purported termination, avoidance or invalidation of PI cover
- Any notification of claim or potential claim to PI insurers

Reporting to Commission

Trigger events include:

(a) Prior Written Consent

- Change of director, controller, partner, MLRO, compliance officer
- Transfer of block of business – 15% of brokerage turnover or fee income (last audited accounts)
- Change of outsourcing arrangements

Reporting to Commission

Trigger events include:

(b) 7 Days Notification to Commission - Include

- Change of AIR, auditor or registered office
- Breach of overseas law, regulation etc
- Litigation or arbitration proceedings against licensees
- Criminal proceedings
- Material business plan change

Reporting to Commission

Trigger events include:

(c) Notification plus plan for remedial action

- Breaches of solvency insurance requirement
- Minimum criteria for licensing
- Cancellation, invalidation or avoidance of PI

Compliance Officers

- Approval by Commission prior to appointment
- Must be sufficiently knowledgeable and experienced
- Clearly defined job specification
- Outsourcing of compliance permitted but Board responsibility remains

Training and Competence

- Training and competence scheme for AIRs
- AIRs fully aware and conversant with products and services provided
- Maintain training log for each AIR

Outsourcing Arrangements

- Licensee always remains accountable for compliance with laws /regulations despite outsourcing
- Requirements before entering into outstanding arrangements
 - Due diligence
 - Legal binding agreement
 - Protection of licensee's intellectual property rights
 - Disaster Recovery
 - Maintenance of client confidentiality

Record Keeping

Including:

- Documents required by AML Handbook
- Reasons for policy cancellations etc
- Maintain client records for prescription period

Annual Return Regulations

The following additional information is required for an intermediaries' annual return:

- Copy of any internal audit report issued during year
- Copy of PI cover note
- Business plan to include financial projections (e.g. cash-flow forecast)
- Details of all overseas regulatory licences etc
- Details of third party arrangements eg outsourcing
- Details of premium and turnover split by product type and geographical location
- If cannot give confirmation of compliance with laws etc what steps taken to remedy breaches

David Quick
Senior Analyst

The Insurance Managers and Insurance Intermediaries (Clients' Monies) Regulations, 2008

Reason:

Putting best practice and common practice into regulations

Intention:

To protect client money passing en route to and from insurers via intermediaries

Application:

Insurance intermediaries and insurance managers when acting as insurance intermediaries

Timing:

Immediate

The Insurance Managers and Insurance Intermediaries (Clients' Monies) Regulations, 2008

Definition of "client monies":

- money for premiums received from a client and held by an intermediary for onward payment to an insurer, and
- money for premium refunds or claims proceeds received from an insurer for onward payment to the client

Does not include "monies held at the risk of insurers" – sometimes referred to as "insurer monies" or "risk transfer monies"

The Insurance Managers and Insurance Intermediaries (Clients' Monies) Regulations, 2008

Definition of "monies held at the risk of insurers":

Monies subject to arrangements which an intermediary has entered into with an insurer whereby the intermediary holds monies as an agent for the insurer to the extent that:

- such monies are treated as having been received by the insurer when they have been received by the intermediary, and
- claims proceeds and premium refunds are only treated as received by the client when they are paid over to the client

The Insurance Managers and Insurance Intermediaries (Clients' Monies) Regulations, 2008

Client Accounts

An intermediary shall:

- open and maintain a separate bank account for client money (a client account)
- ensure that this account is clearly separate and distinguishable from its own bank accounts (office account)

The Insurance Managers and Insurance Intermediaries (Clients' Monies) Regulations, 2008

Client Account must be:

- current or deposit account
- bank or building society licensed in Guernsey (unless otherwise agreed by the Commission in writing)
- in the name of the intermediary
- clear title and description to distinguish from office account

The Insurance Managers and Insurance Intermediaries (Clients' Monies) Regulations, 2008

Client Account shall not hold other money except:

- minimum sum required to open or keep it open
- commission due to the intermediary
- interest credited to the account but not yet withdrawn by intermediary (net of that due to client)
- balancing payments for shortfalls

The Insurance Managers and Insurance Intermediaries (Clients' Monies) Regulations, 2008

- Remittances to be paid into the account no later than the next business day, or as soon as possible, and in any case within 3 business days
- Any failure to be recorded on client file
- Balance must be positive for each client
- Not to be used for payments in advance of receipt of funds from client (or insurer)

The Insurance Managers and Insurance Intermediaries (Clients' Monies) Regulations, 2008

Commission received:

- The intermediary should not withdraw commission from the account until the premium has been paid to the insurer
- Terms of Business Agreement (TOBA) should stipulate treatment of interest
- Client explicit consent for over £20 if retained by intermediary

The Insurance Managers and Insurance Intermediaries (Clients' Monies) Regulations, 2008

Reconciliations

- Balancing the books every 25 days
- Document the completion of the process
- Independently checked
- Discrepancies corrected from other non client accounts

The Insurance Managers and Insurance Intermediaries (Clients' Monies) Regulations, 2008

- Systems and controls
- Inform the Commission – do you or don't you hold client money

Tracy Bideau
Senior Analyst

The Insurance Managers and Insurance Intermediaries (Approved Assets) Regulations, 2008

- Regulations apply to both Insurance Managers and Insurance Intermediaries
- Minimum Capital Requirement
 - Total approved assets less total liabilities
 - Increase from £10,000 to £25,000 or 125% of PI insurance deductible if higher
- Approved Assets
 - Those assets held by a licensee and valued in accordance with Recognised Accounting Standards less those assets designated as “unapproved assets”

The Insurance Managers and Insurance Intermediaries (Approved Assets) Regulations, 2008

- Unapproved Assets
 - Positive goodwill
 - Fixtures and fittings
 - Computers and information technology equipment
 - Motor vehicle
- Lead in time – 12 months

The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Regulations, 2008

- Came into force 23 January 2008
- Amendment to Schedule 4 of IMIIL (Minimum Criteria for Licensing)
- Regulations apply to both Insurance Managers and Insurance Intermediaries – for both applicants and existing licensees

The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Regulations, 2008

- Main changes effecting existing licensees are:
 - to widen the requirements for integrity and skill, and fitness and propriety
 - to extend the requirement for the business of an institution to be directed by at least two individuals so that those individuals must be sufficiently independent of one another

The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Regulations, 2008

- to permit the Commission to take account of any previous conduct and activities of a person when considering their fitness and propriety instead of conduct and activities relating only to business or financial matters
- to include a specific provision on the Commission's ability to reasonably require information so that compliance with the minimum criteria for licensing can be demonstrated

Questions